

### **REMARKS**

Claims 1-9 and 11-33 are pending in this application.

Claim 26 has been amended to remove the language "beneath and around the oil containing vessel." Claim 32 has been amended to properly depend from claim 1. Claim 33 is new and is based on the deleted language of claim 26. Therefore, no new matter has been added by way of these amendments and entry thereof is respectfully requested.

### **Restriction Requirement**

The Examiner has required restriction to one of the following allegedly distinct inventions under 35 U.S.C. 121:

Group I Claims 1-9 and 11-25, drawn to an oil containment system, allegedly classified in class 210, subclass 282; and

Group II Claims 26-31, drawn to a method for constructing an oil containment system, allegedly classified in class 210, subclass 232.

The Examiner has, in addition, required a further election of a single disclosed species of the oil containment system among the configurations of paragraphs [0009] through [0012].

### **Traversal of Restriction Requirement**

The claims of an application may properly be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent and distinct.

Under MPEP § 802, two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design, operation, or effect. One example cited in MPEP § 802 is that a process and the product made under that process are related, and not independent.

Applicants submit that claims 26-31, drawn to a method for constructing an oil containment system, are methods for making oil spill containment systems such as the systems claimed in claims 1-9 and 11-25.

The method of claim 26 can certainly be used to prepare an oil spill containment system for containing oil spills or leaks from an oil containing vessel, comprising a containment basin, a

layer of oil absorbing material contained within said containment basin, and a layer of oil adsorbing material also contained within said containment basin, on top of said layer of oil absorbing material. This oil spill containment system is precisely what is claimed in claim 1.

Since the method of claim 26 is simply a method of making the oil containment system of claim 1, the claims are a process and the product made under that process, and, as such, are related, and not independent. As such, a restriction requirement is inappropriate.

The Examiner suggests that, according to MPEP § 806.05(f), the inventions are distinct if the product as claimed can be made by another and materially different process. Specifically, the Examiner suggests that the system could be made by a process which does not include a step of positioning the system in a containment basin beneath and around an oil containing vessel. Applicants suggest that this language was not intended to be a limitation of the method (which includes a forming step and a covering step). Applicants have therefore amended claim 26 to remove this language. Applicants have added claim 33, dependent on claim 26, and included this language.

Applicants therefore submit that the claims, as amended, are one unified, non-distinct invention.

In addition, the applicants point out that under MPEP § 803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; and (2) there must be serious burden on the Examiner if restriction is not required.

The applicants respectfully submit that there would not be a serious burden on the Examiner if all of the claims were examined. A search of prior art with regard to an oil spill containment system of the Examiner's Group I, would necessitate search of methods for making such an oil spill containment system, since a claim to a method of making such an oil spill containment system would likely anticipate such a system itself. In fact, the Examiner has already acted on the merits of all of the claims in the Office Action of March 15, 2005, and there is no reason to make a restriction at this point.

### **Traversal of Election of Species Requirement**

The Examiner has required election of one of the configurations of paragraphs [0009] through [0012] of the specification. The Examiner states that currently no claims appear to be generic.

Applicants traverse the election of species requirement on the ground that the Examiner has already conducted an examination and issued an action on the merits of all of the claims in the application. It would therefore be no burden on the Examiner, and in fact inefficient for the USPTO as a whole, to eliminate one or more of the species from completion of the examination of this application. Applicants therefore submit that the election requirement is inappropriate and should be withdrawn.

### **Provisional Election**

In response to this restriction requirement, the applicants hereby elect, with traverse, to prosecute the invention of Examiner's Group I, claims 1-9 and 11-25, drawn to an oil containment system. Also, the applicants hereby elect, with traverse, to prosecute the configuration described in 0009 of the specification. The claims readable upon this species are 1-8 and 22-33.

Favorable reconsideration and withdrawal of the restriction requirements and an early action on all of the claims are respectfully requested.

Application No. 10/689,937

Reply to Office Action of December 19, 2005

Should the Examiner believe that a telephone call would be of assistance in advancing the prosecution of this application, the applicants' undersigned attorney invites the Examiner to telephone at the number provided below.

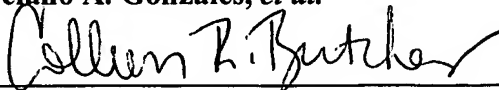
Respectfully submitted,

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March 15, 2006

(Date)

By:



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